

RECEIVED

JUL 21 2015

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

DSS Personnel Office

This Mutual Release and Settlement Agreement (hereafter referred to as "Agreement") is entered into this the 17th day of July, 2015, by and between **ANNA HAMBURG** (hereafter referred to as "Petitioner") and **DEPARTMENT OF HEALTH AND HUMAN SERVICES**, (hereafter referred to as the "Respondent" or "DHHS"), **ALDONA Z. WOS, WAYNE E. BLACK, JAN MARIE BAZEMORE** (all hereinafter collectively referred to as "Parties"), on the following terms:

WITNESS THAT

WHEREAS, Petitioner filed a Petition for Writ of Mandamus and a Motion for Hearing to Determine Compliance, No. 15 CVS 003481, Wake County; and

WHEREAS, the Parties find it mutually desirable to resolve any and all claims which have arisen or might arise as the result of Petitioner's employment with Respondent.

NOW, THEREFORE, THE PARTIES DO AGREE TO THE FOLLOWING:

1. Settlement Payment & Release. For good and valuable consideration set forth below, the Parties agrees as follows:

a. Petitioner's position was reclassified effective January 1, 2015, as a Social Services Program Manager II at a Salary Grade 75. Petitioner received a salary of Fifty Nine Thousand Eight Hundred Eighty-Five Dollars (\$59,885) beginning April, 2015 which represented a 15% increase in her salary.

b. Respondent agrees that Petitioner will be paid back pay and benefits from October 14, 2013 (the start date of the selected applicant for the Social Services Manager II position) to the date of Petitioner's retirement at an increased annual salary of Sixty One Thousand Four Hundred Forty Five Dollars (\$61,445.00) (which is a rate of pay that is

twenty percent (20%) more than the salary that Petitioner earned immediately prior to October 14, 2013), less any salary and benefits already paid since October 14, 2013, in accordance with Section 7 of the State Human Resources Manual. The back pay and reinstatement of benefits will be issued through BEACON and a payment will be paid to Petitioner, with said payments deliverable to Petitioner by check within a reasonable business timeframe, but not later than August 31, 2015. In the event that the General Assembly grants a legislative increase or bonus that is retroactive to July 1, 2015, such additional amount will be added on a pro rata basis to Petitioner's base salary, back pay, front pay and salary reported for retirement purposes.

c. A second payment will be made to Allen, Pinnix, & Nichols, P.A. in the amount of Ten Thousand Dollars (\$10,000.00), no later than July 31, 2015. This payment represents attorney's fees.

d. A third payment will be made to Allen, Pinnix, & Nichols, P.A. in the amount of Three Thousand Six Hundred Fifty Dollars (\$3,650.00), no later than July 31, 2015. This payment represents Petitioner's expert witness fees.

e. Respondent shall reinstate to Petitioner no later than July 31, 2015 an additional twelve (12) hours of leave time, which Petitioner took in pursuit of this litigation.

f. Petitioner shall resign and retire, as of August 31, 2015, provided that Respondent has complied with all terms set forth in this Settlement Agreement by such date. In the event that compliance is delayed due to another agency, Petitioner shall resign and retire once compliance is achieved. Exhibit A is a copy of the resignation letter that Petitioner will sign and submit. Petitioner's retirement application, approval, and retirement benefits are within the discretion of the North Carolina Retirement System. Respondent agrees to

cooperate in the completion of any processing or paperwork which it customarily must complete when one of its employees retires. Respondent agrees to pay to the North Carolina Retirement System the back payment of the employer portion of Petitioner's contributions at a rate of pay that is twenty percent (20%) more than the salary that Petitioner earned immediately prior to October 14, 2013, less contributions already paid.

g. DHHS will provide a PD 14 with a spreadsheet showing the amounts reflected above and Petitioner agrees to sign such document in order to process her back and front pay claims. A copy of the PD14 and spreadsheet will be attached to this Agreement as Exhibit B, and is incorporated herein by reference.

h. DHHS will remove from Employee's personnel file the following documents:

- i. the Letter of Warning issued to Petitioner by Respondent on March , 2015;
and
- ii. any and all documents (including but not limited to evaluations, interview sheets, grievance documents, etc.) pertaining to DHHS' denial of Petitioner's applications for the positions of Social Services Program Consultant II.

All documents identified in paragraph 1.(g) shall be forwarded to the Office of the Attorney General and shall be maintained exclusively in the files related to potential litigation and shall only be made available to parties authorized by law or by court order.

- i. Except for the obligations contained in this Agreement, Employee does hereby knowingly and voluntarily release Employer, agents, representatives, directors, successors, predecessors, heirs, executors, administrators, and assigns from any and all liability that has arisen or might arise from all claims and causes of action based upon or

arising out of 14 OSP 867 and 15 CvS 348, Wake County, and in particular: (i) express or implied contracts; (ii) any public policy, contract, tort, or common law; (iii) all claims for race, gender, handicapping condition, or age discrimination; (iv) all claims for denial of worker's compensation benefits; (v) any and all claims arising from Employee's employment with Employer, and any alleged violation of: The National Labor Relations Act, as amended; Title VII of the Civil Rights Acts of 1964, as amended; Sections 1981 through 1988 of Title 42 of the United States Code; The Employee Retirement Income Security Act of 1974, as amended; The Immigration Reform Control Act, as amended; The Americans with Disabilities Act of 1990, as amended; The Age Discrimination in Employment Act of 1967, as amended; The Family and Medical Leave Act of 1993; The Fair Labor Standards Act, as amended; The Occupational Safety and Health Act; The Consolidated Omnibus Budget Reconciliation Act (COBRA), as amended; (vi) Any other federal, state or local civil or human rights law or any other local, state or federal law, regulation or ordinance; and (vii) Any allegation for costs, fees, or other expenses including attorneys' fees incurred in these matters. The parties agree that Petitioner's potential claims for damages relating to tort or statutory claims due to allegations of environmental contamination and injury from working on the Dorothea Dix Hospital are not waived by this Agreement, or this provision.

j. This Agreement is final and irrevocable, except to the extent it waives claims for federal age discrimination under the Age Discrimination in Employment Act (Title 29, chapter 14 of the United States Code and, specifically, 29 U.S.C. § 626) ("ADEA Claims"). Pursuant to that statute, Employee represents, agrees, and acknowledges: (i) that she has knowingly and voluntarily waived her ADEA rights and claims; (ii) that she

understands the terms of this Agreement; (iii) that she has not waived ADEA rights or claims that could arise after the date this Agreement is executed; (iv) that she has received valuable consideration for the waiver of her ADEA claims and other claims; (v) that she has been advised to consult with an attorney, and has in fact consulted with an attorney of her choosing, prior to executing this Agreement; (vi) that she has been afforded 21 days within which to consider this Agreement and the releases contained therein and that she took advantage of as much of the 21-day period as she wished before signing this Agreement; and (vii) that she will have a period of seven (7) days after execution of this Agreement within which to revoke her release of ADEA Claims by providing written notice of such revocation addressed to counsel for Employer, with said revocation to be effective only upon receipt by Employer's counsel. If not revoked within 7 days of execution as specifically provided herein, this Agreement shall become effective and enforceable in its entirety as of the date executed.

k. Petitioner will not sue Respondent on any matters relating to 14 OSP 867 and 15 CvS 348, Wake County actions arising before the execution of this Agreement, either in her individual capacity or as a party with others, except as excluded in subsection 1(h) above. Except as to the exclusion in subsection 1(h) above, if Petitioner violates this provision, she will i) return all Payment received under this Agreement and Respondent's obligations under this Agreement will be null and void, except to the extent that the release set forth above would be invalidated; and ii) indemnify Respondent for all expenses that it incurs in connection with Petitioner's violation of this provision. Petitioner acknowledges that such violation constitutes sufficient irreparable harm and injury that would justify the issuance of a restraining order.

1. The settlement payments noted hereinabove constitutes the full and complete settlement of any and all monetary and non-monetary claims related to 14 OSP 867 and 15 CvS 348, Wake County actions between Petitioner and DHHS, including claims for wages, salary, commissions, compensatory, general, special and punitive damages, (except as excluded in subsection 1(h) above), injunctive or equitable relief, attorney's fees, interest, expenses, and costs actually incurred.
2. Mutual Covenant Against Disparagement. The Parties recognize that each Party possesses reputation, good name, and professional standing within the community. No Party wishes to interfere with the other Parties' right to promote their reputation, good name, professional standing, and efforts to secure and retain employment or business relationships. Therefore, the Parties to this Agreement agree to restrain themselves from:
 - a. Disparaging the reputation, good name or professional standing of any other person signing this Agreement;
 - b. Speaking any words or taking any actions which are false, misleading, defamatory, unprivileged and without legal excuse; which are intended to and result in exposing the other persons signing this Agreement to hatred, contempt, or injury to reputation, good name, or professional standing; or
 - c. Speaking any words or taking any actions which are false, misleading, defamatory, unprivileged and without legal excuse; which are intended to and result in exposing the other persons signing this Agreement to interference or injury in the employment or business dealings of the other persons signing this Agreement.
 - d. The Parties recognize the existence of absolutely privileged communications, including but not limited to those between spouses and those between attorneys and

clients. Such communications shall not be part of this covenant.

4. Settlement Is Not Admission by Either Party. The Parties mutually agree that this Agreement is entered into for the purpose of compromising all disputed claims related to 14 OSP 867 and 15 CvS 348, Wake County actions and is not to be construed as an admission by any Party regarding the merit or lack of merit of the Parties' respective claims and defenses.

5. Binding Effect of Agreement on Successors in Interest. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the Parties hereto.

6. Rules as to Interpretation of Agreement.

a. Each Party and attorneys for each Party have reviewed this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party, shall not be employed in the interpretation of this Agreement.

b. The validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of the State of North Carolina and the state and federal courts of North Carolina shall have exclusive jurisdiction over any dispute or controversy arising out of this Agreement and the parties thereto. The parties agree that venue in Wake County or the Eastern District of North Carolina is proper.

c. The above-stated provisions constitute the entire agreement as specified by the Parties, and the considerations stated herein are contractual and are not mere recitals.

7. Counterparts. This Agreement shall be executed in two counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed one and the same instrument.

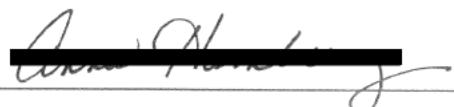
8. Effect of Breach of Agreement. In the event a Party breaches this Agreement, the other Party may avail itself of all remedies provided by law or equity. It is understood and agreed that,

in the event of violation of this covenant, each Party shall have the right to institute and prosecute any proceeding at law or in equity for violating or threatening to violate this covenant. Proceedings may be initiated against the violating Party, their heirs, legal representatives, and assigns for a restraining injunction and also for damages. The Parties further agree that such violation constitutes sufficient irreparable harm and injury that would justify a judge to issue a restraining order. In the event of a suit to enforce this Agreement, the prevailing Party shall be entitled to reimbursement for court costs and attorney fees as awarded by the Court.

IN WITNESS WHEREOF, the undersigned set forth their hands as of the date written below:

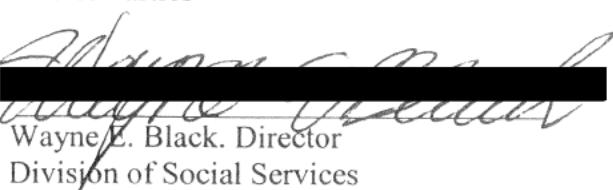
ANNA HAMBURG

7/17/15
DATE



NC DEPARTMENT OF HEALTH AND HUMAN SERVICES & Parties

By:


Wayne E. Black, Director
Division of Social Services

7/16/15
DATE

EXHIBIT A

I hereby resign my employment from the N.C. Department of Health and Human Services,
Division of Department of Social Services effective August 31, 2015.

s/ Anna Hamburg